



**Defined Contribution  
Institutional Investment  
Association**

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August 7, 2013

Submitted Electronically  
Office of Regulations and Interpretations  
U.S. Department of Labor  
Employee Benefits Security Administration  
200 Constitution Avenue  
Washington, DC 20210

**Re: Pension Benefit Statement Project (RIN 120-AB20)**

Ladies and Gentlemen:

The Defined Contribution Institutional Investment Association (“DCIIA”) applauds the Employee Benefit Security Administration (“EBSA”) of the Department of Labor’s (“DOL”) continued efforts to focus defined contribution (“DC”) plan participants on the important role their defined contribution plans play in providing for their retirement income. DCIIA appreciates the opportunity to provide comments on the advance notice of proposed rulemaking (“ANPRM”) regarding pension benefit statements published by EBSA on May 8, 2013.

By way of background, DCIIA is a non-profit association dedicated to enhancing the retirement security of American workers by promoting better defined contribution plan design and institutional investment management approaches. As part of that mission, DCIIA fully supports a lifetime approach to retirement income adequacy and, accordingly, supports more widespread dissemination of income projections. This comment letter builds on our 2010 comment letter in response to DOL’s 2010 RFI, which is available on DOL’s website: <http://www.dol.gov/ebsa/regs/cmt-1210-AB33.html>.

In addition to our response to the joint RFI, DCIIA also testified at the joint hearing held by the Departments of Labor and Treasury (“Agencies”) on the topic of retirement income, and specifically highlighted the importance of displaying accumulated balances as a potential income stream in retirement. At the time, we stated, “DCIIA’s view is that simple projections, with clear emphasis on the assumptions used, *without fear of incremental fiduciary liability*, represents a huge improvement over the current state of affairs and we urge the Agencies to provide clear guidance and encouragement to plan sponsors and vendors on this point as soon as possible.”

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As noted above, DCIIA is an industry association representing investment managers, consultants, recordkeepers, trustees, ERISA counsel and other service providers to the defined contribution system. DCIIA is also guided by a plan sponsor advisory committee, which is made up of more than 30 senior thought leaders from the plan sponsor community. One result of such a diverse membership is a broad spectrum of views, including on this topic. Throughout the remainder of this comment letter, we will highlight our observations, concerns, and recommendations regarding the proposed rule as laid out by EBSA. The details of those concerns and suggestions should not obscure the central point that DCIIA is in favor of widespread dissemination of lifetime income illustrations to defined contribution plan participants. Further, we want those illustrations to be as effective as possible in changing participant behavior in ways that improve retirement security. DCIIA is not arguing that the industry would like to avoid providing lifetime income illustrations to participants, but, rather, we are concerned that overly prescriptive regulations may inhibit what providers and sponsors do.

This latter point is crucial - we are not yet certain as an industry what approach or methodology to displaying/communicating account balances as income amounts is most effective in changing participant behavior (and it is worth noting that the industry has not defined what a successful change in participant behavior would look like, either).

Recent developments in the defined contribution industry, such as automatic enrollment, are a successful marriage of industry experimentation and innovation, and regulatory support. Early adopters of auto enrollment did so before the Pension Protection Act of 2006 (“PPA”) endorsed it, and then regulatory backing led to widespread adoption. The results have been undeniably positive, as DC plan participation rates are significantly higher today than in 2006, affirming the positive role regulations can play in improving retirement security.

Even today, however, we know we haven’t “solved” auto enrollment yet – sponsors and providers continue to experiment with different approaches to auto enrollment and escalation, such as different starting savings rates, or sweeping in existing employees who were not auto-enrolled, all with an eye toward producing better retirement security. DCIIA has a similar vision for lifetime income illustrations – widespread adoption, coupled with continuous improvement. Mandating a single approach today - any single approach - closes the door to future enhancements, and the ability to test incremental improvements for effectiveness. Innovation in this context is not simply about newer technology or more sophisticated models – it is using real world data on participant behavior to improve retirement security.

In the discussion that follows, DCIIA has elected to focus on three topics from the ANPRM, outlined below. We also inquire as to EBSA’s interest in working with DCIIA and academia in testing various approaches to lifetime income illustrations to measure the effectiveness of different approaches.

The three topics that we will cover are:

1. Characterizing lifetime income illustrations as “education”, rather than fiduciary “advice”, and the various positive implications that entails;

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2. Observations regarding the implications, positive and negative, of a mandate;
3. Potential for unintended consequences from a narrow safe harbor or mandate.

1. ***Education versus Advice.*** EBSA can have a significant impact in supporting the use of lifetime income illustrations simply by making it clear that the types of lifetime income estimates described in the ANPRM are non-fiduciary “education” rather than fiduciary “advice.” In support of this, we can provide the following:

We believe income projections of the type proposed in the ANPRM are not within the description of “investment advice” outlined in DOL Regulation Section 2510.3-21(c). Specifically, these projections do not constitute advice as to the value of securities or other property, and do not involve recommendations as to the advisability of any particular investment. Rather, these income projections are comparable to “asset allocation models” for hypothetical participants, and “interactive investment materials” tailored to a specific participant’s circumstances provided for in DOL Interpretive Bulletin 96-1 (“IB 96-1”).

As provided in IB 96-1, “asset allocation models” and “interactive investment materials” illustrate the possible effects on a participant’s account balance of different asset allocation choices. As well, both utilize assumptions regarding retirement ages, income levels, inflation rates, rates of return, and life expectancies and can be based on one or more investment alternatives actually offered under the plan. Yet, in IB 96-1, DOL concluded in each case that the information provided pursuant to those asset allocation models and interactive investment materials merely allow participants to “design and assess” asset allocation models, and are not fiduciary advice.

Accordingly, we respectfully suggest that the retirement income projections described in the ANPRM do not constitute fiduciary “advice” or recommendations. Rather, these projections enable participants to consider a projected stream of income that may result from their account balance after they retire, based on factors such as life expectancies, wage increases, assumed rates of inflation, return, and interest. In that way, income projections are a corollary to the types of information already supported by IB 96-1 – they provide participants access to information to assess their lifetime income. Income projections provide good faith income estimates for the decumulation phase of a participant’s account balance, while the asset allocation models and interactive investment materials previously described in IB 96-1 allow growth estimates for the accumulation phase. For these reasons, we believe the proposed lifetime income projections do not constitute “individualized advice” that would form the “primary basis” for investment decisions.

Also, looking again at IB 96-1, we believe that DOL should expressly state that the proposed “safe harbors” described in the ANPRM and related communications developed in a similar fashion do not implicitly disfavor the “general” (non-safe harbor) approach. DOL was careful to make a similar point in IB 96-1, stating that “no inferences should be drawn from subparagraphs (1) – (4), above, with respect to whether the furnishing of any information, materials, or educational services not described therein may constitute ‘investment advice.’ Determinations as to whether the provision of any information, materials, or educational services not described in any safe harbor constitutes the rendering of ‘investment advice’ should instead be made by reference to the criteria set forth in 29 CFR 2510.3-

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21(c)(1).” Likewise, use of good faith assumptions and innovative approaches in lifetime income statements (rather than safe harbor ones) should not in any way jeopardize the statement’s role as “educational,” as long as the statement does not otherwise provide the sort of ongoing investment advice described in DOL Regulation Section 2510.3-21(c)(1). Similar to IB 96-1, we believe these points could be accomplished by interpretive guidance issued by EBSA (without the need for adoption of any formal regulation) to avoid any inadvertent impact on the robust tools that defined contribution plan participants are already using

It is also helpful to consider the comment DOL made in the ANPRM that DOL “agrees with those commenters who see a need to change the perception of retirement savings from simply a savings account to a vehicle for income replacement during retirement.” This critical social policy objective may be compromised if plan sponsors and recordkeepers have concerns about fiduciary status attaching to the provision of lifetime income information. Leaving the question of fiduciary status unanswered could instead stifle future enhancements or result in formulaic or rote disclosures that honor the letter of whatever regulatory requirement is ultimately put in place, while undercutting its vision and purpose. Accordingly, policy considerations - - - in addition to the black-letter regulatory analysis - - - weigh in favor of categorizing the information as educational.

There has been tremendous growth in recent years in the development of web-based tools to help participants plan effectively for income in retirement. Recordkeepers and others have made significant investments in developing these tools and making them available to plan sponsors and their participants. These investments have been made in recognition of how critical these tools can be in promoting retirement success, and in response to encouragement received from policy makers at DOL, Treasury and members of Congress. An unintended consequence of the approach contemplated in the ANPRM could be reluctance by plan sponsors and recordkeepers to provide plan participants continued access to these evolving tools out of concern for fiduciary risk.

By way of illustration, the universe of currently existing tools for estimating plan-based lifetime income includes the following:

- *Gap Analysis and Education.* Participants see a chart showing the difference between the amounts of monthly lifetime income they are on path to earn (based on current savings and investing behaviors) as compared to the monthly income (based on their selected income replacement ratio). They can perform “what if” analyses to determine the income impact of changing their retirement age, income replacement ratio, or other variables. Participants also receive education about other ways to close the gap by taking full advantage of employer matching contributions, increasing their salary deferral contributions, modifying their asset allocation, and electing to use fiduciary investment advice.
- *Ability to Create a Global View of Retirement Assets.* Participants may input data regarding spousal assets, IRAs, expected inheritance, or other outside savings to estimate their post-

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retirement lifetime income. They can also choose to incorporate individualized Social Security projections into their lifetime income illustration.

- *Customization of Assumptions.* Participants may alter their expected retirement age, future earnings rate (within defined parameters), annual salary, and income replacement ratio and immediately see the impact of those changes on their projected lifetime income.
- *Integration with Lifetime Income Option.* Participants who are invested in guaranteed lifetime withdrawal benefit options or other in-plan annuity options may see the integrated effect on their lifetime income with that investment, combined with their other plan investments.
- *Ability to Take Immediate Action to Improve Outcomes.* Participants who want to take action to close their projected retirement income gap may do so immediately by changing their deferral election, modifying their asset allocation, or signing up to receive fiduciary investment advice. Enabling participants to take immediate action in response to information they receive about their account before procrastination and inertia set in is a key benefit to providing information in a web-based environment and can more effectively promote retirement-income success than providing paper-based communications alone.
- *Personalized Future Withdrawal Plan.* For participants nearing retirement age, a chart may be provided showing an annual withdrawal plan of retirement assets from retirement age through expected mortality. These charts can incorporate Social Security income, the participant's plan account, and all other retirement assets for which a participant has provided data. The individualized withdrawal plan may also show the amount of suggested annual withdrawals from each source, taking into account the tax impact of the withdrawals.
- *Translating savings into a lifetime income number.* For participants who want to take their future spending/income needs and translate it into the present value of assets needed to support those spending/income needs. Participants in the pre-retirement phase, ages 55-64, can see the income-generating potential of their current portfolio, and adjust their savings, portfolio allocation, or both, to close the gap. Individuals can also use this metric to translate a budget into the required savings needed to support that budget, based on the current cost of lifetime income beginning at age 65.

In all cases, we believe these interactive investment tools have been developed with the understanding that they provide general financial and investment information and thus are “education” as defined by IB 96-1. We respectfully suggest that continued enhancements of the tools for estimating lifetime income may also depend on their formal characterization by DOL as non-fiduciary “education.”

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In summary, DCIIA believes that EBSA providing guidance stating that lifetime income projections described in the ANPRM do not constitute fiduciary “advice”, but, rather, consist of “education” is critical to ensure the continued evolution of useful and effective lifetime income illustrations and related tools beyond the retirement income projections EBSA wishes to support. We also believe clear interpretive guidance would, in fact, provide a much-needed catalyst for innovation and additional tools and resources being made available to assist participants. In the current regulatory environment, many sponsors choose not to offer such resources out of a fear that they may cross the line between education and advice. A clear statement of support, along with a flexible approach based on reasonableness and generally-accepted principles and guideposts that encourage sponsors to promote the available tools and information supporting retirement income disclosures, should also lead to greater participant engagement and support improved DC participant outcomes.

**2. *The Advisability of a Mandate.*** DCIIA members uniformly believe it is important to “change the mindset” around DC plans to include a focus on the importance of the DC plan in helping participants secure their retirement income needs. However, there are differing views within our membership regarding the best way to achieve this goal.

While DCIIA fully supports moving toward universal lifetime income disclosure, some DCIIA members question whether a mandate is the best way to get there. Members taking that view point to the following concerns:

It would be hard to envision a mandatory structure that could be dynamic enough to cover the various online tools that have been developed in recent years, much less the more robust tools that are currently under development. There is much research that needs to be done to determine what forms of disclosure (and what framing techniques) will have the greatest impact on participant decision making. There is some early experience that supports the notion that dynamic online tools and calculators - which have increased substantially in recent years - can drive engagement more than static paper resources. For that reason, some in DCIIA’s membership have suggested that, in lieu of the proposed structure in the ANPRM, EBSA could require that participant statements include a reminder about available lifetime income education, and provide a link to online tools and calculators (whether furnished by the plan administrator, recordkeeper, or DOL’s online calculator). It is worth noting that this change would have favorable cost implications as well.

Still other DCIIA members believe that mandating a narrowly defined income projection element in the benefit statement could be the most efficient way to ensure that we “reframe” the way participants view their retirement plan account balances. Members taking this view point to the following advantages: Universal lifetime income projections could: 1) provide a basis for participants to measure their progress in building a lifetime retirement income stream; and 2) foster their belief that defined contribution plans are more than mere savings accounts. Moreover, standardized assumptions and factors used to calculate lifetime income would create consistency and credibility for these illustrations and may reduce the cost to implement and incorporate the illustrations into benefit statements (a cost that may be passed on to participants), as standard assumptions will allow the marketplace to get the necessary technology into place more quickly and cost effectively.

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Members who feel that the benefits of a new required disclosure element outweigh the disadvantages of mandates in general share the concern about the potential to inhibit new developments but also point to concerns that disclosure of account balances alone may contribute to sub-optimal levels of saving and that participants may spend down their accounts too quickly if they do not realize the level of ongoing income their account balance can sustainably support. So, they believe the risk of inhibiting innovation is balanced by the need to ensure that lifetime income illustrations become a universal standard.

However, it is important to note that the DCIIA members who support a mandatory structure also believe that disclosure must be characterized as non-fiduciary “education” and not fiduciary “advice” for the reasons previously noted. This would encourage plan sponsors and service providers to offer and promote their best income-planning tools and calculators, without undue concern of fiduciary liability.

As mentioned above, another concern of a mandatory structure is that there is limited research to date on the impact that different forms of retirement income disclosures have on participant decision-making. DCIIA is in the initial stages of developing such a study in collaboration with members of the academic community and plan sponsor organization(s). Specifically, we are in discussions with Gopi Shah Goda, of Stanford University, and Colleen Manchester and Aaron Sojourner, both of the University of Minnesota, to build on recently published research that explored these important themes. See “What Will My Account Really Be Worth? Experimental Evidence On How Retirement Income Projections Affect Savings, July 4, 2012. We expect that our research will provide practical guidance and could help answer the following sample questions:

1. How does the framing of retirement income disclosures affect saving decisions?
2. What are the mechanisms (e.g. reduction of negative exponential growth bias or making retirement savings more salient) through which retirement income disclosures affect saving decisions?
3. What is the impact of retirement income disclosures on annuitization behavior?

We would welcome DOL’s participation in the study and respectfully suggest that data and analysis from this and other studies should be viewed as a key prerequisite to thoughtful and effective regulation of lifetime income disclosures in defined contribution plans.

As supporters of increased retirement income disclosures, we would also be pleased to work with EBSA in developing a “demonstration project” to help identify optimal approaches. While we suggested one such project that we have been developing, we would be happy to work with EBSA and others on projects that advance the policy discussion through education and research. The idea for a demonstration project was recently proposed by Shlomo Benartzi and John Payne, respectively of University of California, Los Angeles and Duke University, to support new DC designs; *see* “Give Sponsors a Safe Haven to Encourage 401(k) Innovation,” *Pensions and Investments* (May 27, 2013). The article quotes J. Mark Iwry, Senior Adviser to Jacob J. Lew, Secretary of the Treasury, as stating that “[p]olicymakers need to step up our efforts to identify and test promising new ideas. We can help speed the pace of innovation by encouraging research and working more closely with academia.”

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As discussed earlier, academics and thought leaders in the industry are still working to determine the most effective approach or methodology for changing participant behavior through communicating account balances as income amounts. Furthermore, we are in the early stages of defining the desired level of success in changing participant behavior. Mandating a single approach today - any single approach - runs the risk of closing the door on future enhancements, and the ability to deploy incremental improvements for greater effectiveness.

**3. *Potential for Unintended Consequences.*** DCIIA's members have also expressed collective concern about the potential for unintended consequences if the ANPRM approach to the safe harbor structure were followed. One specific unintended consequence identified in our discussions is the possibility of "regression to the lowest common denominator" that can come with safe harbor disclosures and regulations, often as a result of the fear of fiduciary liability if diverging from the safe harbor. Past experience has taught us that if DOL mandates a specific approach, or defines one approach (or methodology and assumptions), it is unlikely that a plan sponsor or their consultants, legal and other advisors would be willing to contemplate another approach without concerns about additional fiduciary liability. For example, ERISA Section 404(c) provides a safe harbor, but at the same time has been effectively viewed by plan sponsors and their advisors as the sole means of addressing fiduciary liability for participant investment choices, as distinct from merely one alternative to a more general rule. See, e.g., *Peabody v. Davis*, 636 F.3d 368 (7th Cir. 2011). In the same way, DOL's Qualified Default Investment Alternative ("QDIA") safe harbors contained in its QDIA regulations at DOL Regulation Section 2550.404c-5 have become the predominant default investment options used by plan sponsors despite the fact that DOL has added commentary that other types of default investment options may be appropriate. See DOL Regulation Section 404c-5(a)(2) (stating that the QDIA standards "are not intended to be the exclusive means by which a fiduciary might satisfy his or her responsibilities" under ERISA); see also the related discussion in the QDIA preamble at 72 Fed. Reg. 60464. Stated another way, the existence of a "safe harbor" approach may create an implication (whether intended or not) that any other approach is "unsafe." DCIIA is thus concerned that plan sponsors may perceive that they would be exposed to an increased risk of litigation if DOL mandates a specific safe harbor, particularly if they wish to consider other alternatives. An additional concern is that the impetus to create additional non-"safe harbor" tools could be decreased.

To avoid this result, DOL could instead adopt a flexible approach that encourages research, development and experimentation. A clear statement that lifetime income illustrations (and related modeling tools) are typically expected to constitute "education" and not fiduciary "advice" under IB 96-1 is a key first step. Beyond that, there are a number of potential minefields to navigate. A broad general rule seems like a clear place to start. If DOL feels that plan sponsors will need more specific guidance, it should be made clear that such guidance is merely intended to serve as an example (or series of examples) of what could be done under the general rule. Thus, the term "example(s)" may be more useful, and less confusing, in this context than the term "safe harbor," which can imply a lack of safety for those that do not follow it verbatim. As noted above, the regulation could also state that no inference would be drawn from the examples (or safe harbor) of a sponsor's decision to use the general rule. Finally, if DOL prefers to follow the safe harbor approach, DCIIA suggests that care be given to identify what it is a safe harbor from (presumably from non-compliance with the periodic benefit statement requirement

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contained in Section 105(a) of ERISA) in order to limit the risk of mischaracterization that lifetime income illustrations otherwise constitute fiduciary “advice”.

*Summary*

In summary, DCIIA commends DOL for shining a light on the need to change defined contribution plans to include a greater focus on lifetime income. Indeed, one of DCIIA’s founding core beliefs is that “[t]he primary role of defined contribution retirement plans is to create retirement income adequacy: Helping plan participants build sufficient savings to achieve their goals while working (accumulation) to support their income needs in retirement (distribution).” DCIIA members differ in their view on the best way to achieve this goal, including the advisability of a mandate, but uniformly believe that lifetime income disclosure is a good thing. Moreover, DCIIA members universally believe that DOL can, from a regulatory perspective, take an important step to help foster innovation in this area by clearly stating that new forms of lifetime income disclosure will be treated as non-fiduciary “education” and not “advice” under IB 96-1.

DCIIA members also believe that EBSA should carefully consider the potential consequences of a specific benefits statement mandate or safe harbor in light of how it may impact other tools and disclosures commonly being provided and consider leading by way of examples and interpretive guidance as opposed to adopting prescriptive safe harbor assumptions that may be outdated before they become effective. DCIIA also supports additional research to help determine what types of retirement income disclosures best support participant engagement and improved participant retirement income outcomes.

To close, we want to provide some background information on the lifetime income illustration practices of DCIIA’s membership. In particular, we want to assure DOL that the industry is moving to provide better retirement income planning information to plan participants. As you may recall, in October 2011, DCIIA helped facilitate a Lifetime Income Illustrations Summit that included a broad cross section of industry leaders as well as representatives from both DOL and Treasury. During this summit, several recordkeepers and plan sponsors shared their current lifetime income illustration tools, and a number of providers shared information on plans to expand the use of illustrations in the future. As part of the summit, DCIIA conducted a survey of the eight recordkeepers that participated (collectively this group covered about 34 million DC plan participants at the time). All eight recordkeepers reported that they offered some form of lifetime income illustration, reaching 45% of their collective participant population. Admittedly, the group of firms that chose to participate in our summit may include some “selection bias” in favor of disclosure. So, it is useful to note that our findings are consistent with the information contained in the most recent DC Recordkeeper Survey conducted by Callan Associates (in which 15 of the 17 responding firms reported that they have the capability to provide lifetime income illustrations to defined contribution plans that they administer).

In June 2013, DCIIA conducted an update to this survey while compiling our response to the ANPRM. Three recordkeepers completed the update and (below) we note three important results from the updated survey.

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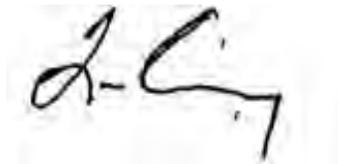
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1. All three respondents have enhanced (or have plans to enhance in the near future) their lifetime income illustration capabilities since the summit (in October 2011).
2. While these recordkeepers are still digesting the implications of the ANPRM, all indicated they would consider changing their lifetime income illustration services should it be adopted in its current form. In other words, the proposal may have the unintended consequence of altering or even restricting current practices.
3. All three recordkeepers would welcome guidance clarifying that lifetime income illustrations and planning tools are education and not fiduciary “advice”.

While this is a very limited sample, we felt it was important to share as these responses provide a window into the potential unintended consequences we have identified in this letter. We have no doubt that other firms would report similar perspectives if we had more time to conduct the survey. To that end, we’d be happy to re-open the survey in order to gather additional responses and share them with the DOL.

DCIIA appreciates the opportunity to provide our views to EBSA on lifetime income disclosures in response to the ANPRM. We look forward to continuing to work together with you to improve the retirement security of American workers.

Sincerely,



Lew Minsky  
DCIIA Executive Director  
Defined Contribution Institutional Investment Association (DCIIA)